MOHAMAD YAZRI MINHAT

v.

PP

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
MOHD GHAZALI YUSOFF JCA
[CRIMINAL APPEAL NO: W-05-11-1999]
5 FEBRUARY 2003

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Trafficking in a dangerous drug - Trafficking in 133kgs of cannabis - Accused sentenced to death - Whether conviction and sentence to be upheld*

EVIDENCE: *Identification evidence - Identification of accused - Failure of judge to consider Turnbull Guidelines - Whether a serious misdirection*

CRIMINAL PROCEDURE: *Charge - Amendment of - Whether trial judge erred in amending charge - Whether trial court could amend at any stage - Criminal Procedure Code, s. 158*

The accused/appellant was convicted of trafficking in 133kgs of cannabis and sentenced to death under the Dangerous Drugs Act 1952 ('the DDA') by the High Court. The prosecution's case was based on a surveillance carried out by their witness ('PW') who was a member of the police force. PW testified that the drug was found in a car used by the accused. Before the latter's arrest, PW added that at around 9.45pm the accused was seen busying himself with something in the car for a considerable period of time and thereafter entered his house. The surveillance continued up to the point a police raid was conducted which revealed the existence of the aforementioned drugs in the said car.

The accused appealed against the High Court's decision. The grounds of appeal were as follows. Firstly, that the quality of identification was tainted as it was based on the evidence of a fleeting glance. Counsel contended that the trial judge ought to have approached PW's testimony with caution based on the circumstances. It was argued that the trial judge had not considered the *Turnbull* Guidelines. Secondly, it was submitted that the trial judge had misdirected himself by convicting the accused of trafficking by transportation when the prosecution's evidence, at most, pointed towards the offence of possession. Lastly, the accused argued that the trial judge was wrong in amending the charge originally framed by the prosecution.

Held:
Per Gopal Sri Ram JCA

[1] Concerning the identification point, the trial judge had properly directed his mind to the nature and quality of PW's cross-examination in relation to the failure of the defence to challenge PW's evidence on the identification at the relevant time, and secondly the fact that the accused had fabricated evidence in the trial. It is settled law that the telling of lies or concocting of evidence is a strong circumstance upon which the prosecution may rely against the accused. These factors convinced the trial judge of the correctness and truthfulness of PW's testimony. (p 71 a-i)

[2] The fact that an accused is transporting a quantity of drug from one point to another does not make him a trafficker. Such a determination depends upon the facts and circumstances of the given case, including the quantity of the drugs and any transaction the accused proposed to enter into. (p 75 b-c)

[2a] The trial judge, in putting the large quantity of drugs in the forefront of his mind, was satisfied that the accused could not have such a quantity in his possession, control and custody save for the purpose of trafficking. That explained the transporting by the accused of the drug found in his car. Applying the common sense approach laid down by Lord Diplock in *Ong Ah Chuan*, the trial judge had properly concluded the accused was guilty of trafficking. (p 75 f-h)

[3] Section 158 of the Criminal Procedure Code confers wide powers on a trial court at any level to amend the charge, subject to the rule that it should not cause any prejudice to the accused or result in injustice. In the present case, there was nothing the trial judge put in the charge which was not already there in the prosecution's case. Thus, the accused could not have been taken by surprise. (p 76 a-c)

[Appeal dismissed; appellant's conviction and sentence affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Tertuduh/perayu disabitkan dengan kesalahan mengedar 133kg cannabis dan dihukum mati oleh Mahkamah Tinggi di bawah Akta Dadah Berbahaya ('ADB'). Kes pendakwa berasaskan pengawasan yang dijalankan oleh saksi mereka (SP), seorang anggota polis. SP memberi keterangan bahawa dadah tersebut dijumpai dalam kereta yang diguna oleh tertuduh. Tambah SP, lebihkurang jam 9.45 malam tertuduh sibuk dengan sesuatu di dalam keretanya untuk suatu jangkamasa yang agak panjang dan selepas itu memasuki rumah

sebelum dia diberkas oleh polis. Pengawasan itu berterusan sehingga serbuan polis dijalankan di mana dadah berkenaan dijumpai di dalam kereta tersebut.

Tertuduh membuat rayuan terhadap keputusan Mahkamah Tinggi berdasarkan hujah-hujah seperti berikut. Pertamanya, kualiti pengenalan tercemar kerana ia berpandukan bukti pandangan sekilas. Peguamnya mengadu bahawa dalam halkeadaan yang wujud, hakim bicara seharusnya mempertimbangkan keterangan SP dengan hemat dan cermat yang sepatutnya. Telah dihujah bahawa hakim bicara tidak mempertimbangkan Prinsip *Turnbull*. Keduanya, dihujah bahawa hakim bicara tersalah-arah dirinya dalam menyabitkan tertuduh dengan kesalahan mengedar melalui pengangkutan bilamana bukti pendakwa, pada keseluruhannya, hanya menunjukkan kewujudan kesalahan milikan. Akhir sekali, tertuduh mengutarakan bahawa hakim bicara tersilap dalam meminda pertuduhan asal yang dibentuk oleh pendakwa.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Berkenaan dengan perkara pengenalan, hakim bicara dengan betulnya telah menghalakan fikirannya terhadap sifat dan mutu pemeriksaan-balas SP, pertama, bilamana pihak pembela gagal untuk mencabar keterangan PW mengenai isu pengenalan pada masa berkenaan, dan kedua, wujudnya fakta yang menunjukkan bahawa tertuduh telah membuat keterangan palsu semasa perbicaraan. Adalah lazim bahawa membohong atau merekapalsu keterangan memberikan pendakwa sebab yang kukuh terhadap pendakwaan tertuduh. Faktor-faktor ini telah meyakinkan hakim bicara akan keesahan dan ketepatan keterangan SP.

[2] Fakta bahawa tertuduh mengangkut sejumlah dadah yang besar dari satu tempat ke satu tempat yang lain tidak menjadikannya seorang pengedar. Penentuan sebegitu bergantung kepada fakta dan keadaan sekeliling kes berkenaan, termasuk jumlah dadah dan transaksi yang ingin dimasuki oleh tertuduh.

[2a] Dalam pemikirannya, hakim bicara telah mengutamakan kewujudan jumlah dadah yang besar dan telah berpuas hati bahawa tertuduh tidak mungkin mempunyai kuantiti sebegitu banyak dalam milikan, kawalan dan jagaannya jika tidak untuk tujuan mengedar. Ini menjelaskan kenapa tertuduh mengangkut dadah tersebut di dalam keretanya. Hakim bicara sememangnya betul dalam mendapati tertuduh bersalah mengedar dengan menggunakan pendekatan yang dinyatakan oleh Lord Diplock dalam kes *Ong Ah Chuan*.

[3] Seksyen 158 Kanun Prosedur Jenayah memberi bidangkuasa luas kepada mahkamah perbicaraan untuk meminda pertuduhan pada mana-mana peringkat, akan tetapi pemakaiannya tidak boleh memprejudiskan tertuduh atau membawa kepada ketidakadilan. Dalam kes ini, hakim bicara tidak ada membuat penambahan kepada pertuduhan selain daripada apa yang terkandung dalam kes pendakwa. Oleh itu, tertuduh tidak patut merasa terkejut.

Rayuan ditolak; sabitan dan hukuman perayu dikekalkan.]

Case(s) referred to:
Chow Kok Keong v. PP [1998] 2 CLJ 469 FC ***(refd)***
Ong Ah Chuan v. PP [1981] 1 MLJ 64 ***(refd)***
PP v. Hairul Din Zainal Abidin [2001] 6 CLJ 146 HC ***(refd)***
PP v. Mohd Farid Mohd Sukis & Anor [2002] 3 MLJ 401 HC ***(refd)***
R v. Turnbull [1976] 3 All ER 547 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 158
Dangerous Drugs Act 1952, s. 2

Other source(s) referred to:
Archbold, *Criminal Pleadings Evidence and Practice*, 2002 edn, p 1307
Sarkar on Evidence, 15th edn, Rep 2001, p 219

For the appellant - Bachan Singh; M/s Bachan & Kartar
For the respondent - Anselm Charles Fernandis DPP

[Appeal from High Court; Kuala Lumpur; Criminal Trial No: 45-29-1997]

Reported by M Maheswaran

JUDGMENT
(Oral)

Gopal Sri Ram JCA:

This is the judgment of the court

The appellant before us was convicted for the offence of trafficking in dangerous drugs. He was sentenced to the mandatory death penalty prescribed by the Dangerous Drugs Act 1952 ("the Act").

At the outset we should mention that the drug concerned is cannabis weighing about 133kgs. The importance of the weight will become apparent later in this judgment. But we must first hearken to the facts.

PW15 is a lance corporal in the police force. On 17 January 1997 at about 4pm he received instructions from his superior, Inspector Mohan, to carry out surveillance on a male Malay who was using car registration number WED 577 at Kampong Chubadak, Sentul Pasar, Kuala Lumpur. It would appear that Inspector Mohan did not play any other role in the matter and it therefore comes as no surprise that he was not called by the prosecution.

Acting upon the instructions to which we have referred, PW15 proceed to the area in question and commenced his surveillance. At about 4.30pm on 17 January 1997 PW 15 saw the target vehicle being driven by a male Malay who was later identified as the appellant. PW15 then followed the target vehicle. He saw it being driven into the front of a house in Kampong Chubadak. He saw the appellant entering the house. The appellant wore a baseball cap. Having noticed these things, PW15 continued to hold surveillance. At about 9.45pm that night he saw the appellant emerging from the house.

The appellant went to the target vehicle. He opened its doors. He partially entered it. PW15 could see the bent body of the appellant. He observed the appellant busying himself with something inside the car. This activity went on for about 20 minutes. It is apparent from the evidence that PW15 had kept his eyes peeled to the appellant's activity. After a lapse of about 20 minutes the appellant re-emerged from the target car and once again entered the house. PW15 then conveyed the results of his observation to his superiors.

In the early hours of 18 January 1997 – in the evidence it is stated as 3.15am – a police party led by PW17 raided the house in question. They were met by the appellant's mother at the front door and permitted to enter. They proceeded to a room in the house. They knocked on its door. There was no response. So they kicked it open and entered. The appellant who was obviously asleep awoke. He was asked for his identity card. In response he pointed to a bag in the room. A search of that bag revealed a key. The police used that key to gain access into the target vehicle. They found in it, both in the front and back seats as well in the boot, clear plastic bags containing substances which on subsequent chemical analysis was found to be cannabis. The appellant was arrested, charged and convicted of the offence which we have already described.

Before us a number of grounds were succinctly argued by learned counsel for the appellant. We do not think that we would be doing any injustice if we summarise his complaints under three broad headings namely:

(i) The quality of the identification evidence;

(ii) The learned judge misdirected himself when he found the appellant guilty of trafficking by transportation; and lastly

(iii) The learned judge was wrong in amending the charge originally framed by the public prosecutor.

We will deal with each of these grounds in succession.

The Identification Point

Now, the essence of counsel's argument is that the judgment of the learned judge is bereft of any reference to the guidelines regarding identification in *R v. Turnbull* [1976] 3 All ER 547. It is submitted that the failure of the learned judge in the present case to address his mind to the principles in *Turnbull*'s case is a serious misdirection. Counsel then drew our attention to several passages in the judgment relating to the issue of identification. Mr. Gurbachan said that the identification is based on evidence of a fleeting glance. He said that there is here a whiff of erroneous identification. His argument is that if the learned judge had addressed himself to the case of *Turnbull* he would have approached PW15's evidence with the caution warranted in the circumstances.

Now, the English case of *Turnbull (supra)* did not lay down any proposition of law embodied in concrete. As all members of the criminal bar are aware, the several propositions in *Turnbull* are known as the "*Turnbull* guidelines". And that is what they really are. They are just guidelines and each case depends on its own facts. What was said in *Turnbull* does not amount to inflexible rules with no exceptions whatsoever.

That much is clear from the following passage in *Archbold's Criminal Pleadings Evidence and Practice*, 2002 edn, p. 1307:

> The guidelines should not be applied inflexibly: *R v. Keane*, 65 Cr. App. R. 247, CA. No particular form of words is required: *Turnbull, ante* 14-2. The basic principle is the special need for caution when the issue turns on evidence of visual identification.

Sarkar on Evidence, 15th edn, Reprint 2001 p. 219 is more or less of the same opinion:

> What weightage should be given to the evidence of identification of witnesses who identified the accused for the first time in court is a question of fact and no straight jacket formula applicable to all cases can be laid down (*Madhukar Damu Patil v. State of Maharashtra* [1966] Cri LJ 1062, 1065 (Bom)).

In the present instance the learned judge accepted PW15 as a witness of truth. He directed his mind to the nature and quality of the cross-examination to which PW15 was subjected. His consideration of the evidence reveal two telling points of crucial importance.

The first of these is the failure of the defence to challenge PW15's evidence on the identification at the 9.45pm incident. To recall, the accused had briefly entered the target car at about the given time. It is a reasonable inference from this evidence that he would have seen the offending articles in the car. Yet he did nothing except to re-enter his home.

The second point is more serious. It emerges from the defence evidence led at the trial. We must advert to it briefly. The appellant in the course of the prosecution's case tendered a receipt from a motor workshop. It was shown to the investigating officer during his cross-examination and put in and marked for identification only. It was later properly marked as an exhibit when the appellant's father gave evidence during the defence case. What was sought to be proved by this receipt was that the target vehicle had been in the workshop in question on 17 January 1997 and had been picked up by the appellant's father. The point sought to be made was that it could not have been the appellant driving the target vehicle at the material time. The prosecution faced with this piece of evidence applied to call the mechanic, the maker of the document, in rebuttal. That application was opposed. But the learned judge permitted the calling of the evidence. We think that he was correct in doing so. As it turned out the exhibit proved to be suspect. The judge found the whole of the evidence relating to the alleged repair of the target vehicle to be a tissue of lies. We think that he was entitled to arrive at that conclusion. The evidence certainly warrants it.

It is a settled principle of the law of evidence that the telling of lies or concocting of evidence is a strong circumstance upon which the prosecution may rely against the accused. Once again we quote from *Archbold (supra)* on the relevance of lies to the issue of identification.

> [L]ies told by a defendant may provide support for identification evidence if the Judge is satisfied that the lies are deliberate and related to the issue. The jury must be given a direction along the general lines indicated in *R v. Lucas* 73 Criminal Appeal Reports 156 at 162; *R v. Goodway* 198 Criminal Appeal Reports 11.

Here the learned judge, as we already said, directed himself quite rightly on the fabrication point. Consequently the evidence of identification taken in its proper context and given its appropriate weight flew to its target. It convinced the learned judge of the correctness and truthfulness of PW15's testimony.

It left him in no doubt. Consequently we find no merit in the complaint by learned counsel for the appellant that the failure of the learned judge to refer to the "*Turnbull* Guidelines" merits appellate intervention.

The Possession Point

Now to the second ground of complaint. The gist of the argument here is that the evidence led by the prosecution put at its highest only established possession. And counsel quite rightly said that mere possession (or what Augustine Paul J in *Public Prosecutor v. Hairul Din bin Zainal Abidin* [2001] 6 CLJ 480 and *Public Prosecutor v. Mohd Farid bin Mohd Sukis & Anor* [2002] 3 MLJ 401 appropriately described as "passive possession") is not trafficking. There are numerous cases that illustrate this point. We have been referred to several of them. We trust that we would be forgiven if we do not mention all of them here. They are decisions on their own facts. They turn on the failure by the prosecution in each of them to establish trafficking.

But there is one authority cited to us by Mr. Gurbachan Singh which we think we ought to mention. It is *Chow Kok Keong v. Public Prosecutor* [1998] 2 CLJ 469. The relevant passage appears at p. 484 of the report. It is in the judgment of Edgar Joseph Jr, a judge of exceptional ability and learning. The passage reads as follows:

> The Judge, however, appears to have overlooked the later Supreme Court case of *Cohen Lorraine Philis & Anor* [1989] 3 MLJ 289, where the Court (per Abdul Hamid LP) held that in a prosecution for trafficking in dangerous drugs, a defence of self-consumption might be available even where the quantity of drugs involved was in excess of the statutory minimum prescribed under s. 37(da) of the Act, but whether it could succeed would depend upon the particular circumstances of each case. And, in the subsequent case of *Ng Chai Kem v. PP* [1994] 2 MLJ 210, the Supreme Court followed *Cohen.*

In our view *Chow Kok Keong* is an important decision. Quite apart from the fact that it is binding on us, it demonstrates the importance of having regard to the facts of a particular case to determine whether the elements of trafficking had been made out. It reminds us that the general definition of trafficking found in s. 2 of the Act is subject to the context of the particular case. It re-states in outline the route already taken by Lord Diplock in *Ong Ah Chuan v. Public Prosecutor* [1981] 1 MLJ 64, at p. 68:

> To 'traffic' in a controlled drug so as to constitute the offence of trafficking under section 3 involves something more than passive possession or self administration of the drug; it involves doing or offering to do an overt act of one or other of the kinds specified in paragraph (a) of the definition of 'traffic' and 'trafficking' in section 2. Even apart from any statutory definition, the ordinary meaning of the verb 'to traffic', in the particular context of

trafficking in goods of any kind, imports the existence, either in fact or in contemplation, of at least two parties: a supplier and a person to whom the goods are to be supplied. This concept, involving transfer of possession, is reflected in the statutory definition itself. Of the seven verbs used to describe the various kinds of overt acts which constitute trafficking 'transport' is sandwiched between 'sell, give, administer' which precede it and 'send, deliver or distribute' which follow it. All of these other verbs refer to various ways in which a supplier or distributor, who has drugs in his possession, may transfer possession of them to some other person. 'Transport', although it may involve possession of the drugs by the person who transport them, is the only member of the heptad of verbs that is not inconsistent with the retention of possession of the drugs by him after their transport. It must mean moving the drugs from one place to another; it may mean moving them also to another person but it need not do so. Whether it bears the wider or narrower meaning depends upon the context in which the verb appears. In their Lordships' view the immediate context of the verb 'transport', to which attention has been drawn, attracts the maxim *noscitur a sociis*. This, and the fact that it appears in the definition of the verb to 'traffic', of which the natural meaning in the context of trafficking in goods involves dealings between two parties at least, and that the evident purpose of the Act is to distinguish between dealers in drugs and the unfortunate addicts who are their victims, all combine to make it clear that 'transport' is not used in the sense of mere conveying or carrying or moving from one place to another but in the sense of doing so to promote the distribution of the drug to another. Supplying or distributing addictive drugs to others is the evil against which section 3 with its draconian penalties is directed.

The Court of Appeal of British Columbia in *R. v. McDonald* [1963] 43 WWR at page 342, interpreted 'transport' in the virtually identical definition of 'traffic' in the Canadian Narcotic Control Act, 1960-61, as bearing this restricted meaning and the same interpretation was adopted by the Court of Appeal of Newfoundland in *R. v. Greene* [1997] 74 DLR (3D) 354. Acceptance of it is implicit in the *ratio decidendi* of the Court of Criminal Appeal of Singapore in *Wong Kee Chin (ubi sup)*.

So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorized by the Act or Regulations, involves an offence of having the drug in one's possession under section 6 but does not amount to the offence of trafficking under section 3. It is otherwise, however, if the transporter's purpose, whether it is achieved or not is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of section 10 of the Drugs Act and section 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves the purpose irrelevant to his guilt of the offence of trafficking under section 3; since they

provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under section 29 and the Second Schedule.

This is a very wide description of acts, that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of sections 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.

Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible – even if there were no statutory presumption such as is contained in section 15 of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. All that section 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the statutory presumption under section 15. In the instant case, however, the quantities involved were respectively one hundred times and six hundred times the statutory minimum.

> Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place another and, if he can satisfy the court, upon the balance of probabilities only, that they were destined for his own consumption he is entitled to be acquitted of the offence of trafficking under section 3.

We have quoted at length from Lords Diplock's judgment to demonstrate the value of the direct evidence led before the learned judge and now in the record of appeal provided to us.

To summarise, the fact that the accused is transporting a quantity of drugs from one point to another does not make him a trafficker. Whether he is a trafficker in those circumstances depend on the facts and circumstances of the given case, including the quantity of the drugs and any transaction the accused proposed to enter into.

Applying the common sense approach laid down by Lord Diplock in *Ong Ah Chuan,* the learned judge's conclusion that the appellant was guilty of trafficking is abundantly justified.

This is how the learned judge put it at p. 24 of his judgment:

> I find the story and the defence of the accused has not raised any reasonable doubt on the prosecution case that he was in exclusive control and custody of the cannabis in the car at about 4.30 pm on 17.1.1997 and that he was aware of the nature of the cannabis in the car – that he was in possession of the cannabis – and that he transported the cannabis in the car from outside Kg. Chubadak Dalam to Kg.Chubadak Dalam, Sentul Pasar. I find him guilty on the charge save that the date and time of the offence is amended to read as occurring on 17.1.1997 at about 4.30 pm. And I convict the accused on the charge.

We find counsel's attack on this finding by the learned judge to be without merit. It is plain and obvious from a reading of the judgment as a whole that the learned judge had the large quantity of drugs here in the forefront of his mind. The several passages in his judgment reflect the learned judge's satisfaction that the appellant could not have had such a large quantity of drugs in his possession, custody and control save for the purpose of trafficking it to others known or unknown. That explains the transporting by the appellant of the drug in the car in which it was found. For that reason we must with respect reject the arguments advanced to us by learned counsel for the appellant.

The Amendment To The Charge

We now turn to the third ground. There is really nothing on this point. Section 158 of the Criminal Procedure Code confers wide powers on a trial court at any level to amend the charge. What is important is that the amendment should not cause any prejudice to the accused or result in an injustice to him. We have read the judgment under appeal and scrutinised the record with great care and find the amendment to the charge to be justified. There is nothing the learned judge put in the charge which is not already there in the prosecution case. The appellant could not therefore have been taken by surprise.

We have taken a step back and looked at the evidence and considered the case as a whole. We have carefully scrutinised the judgment of the learned judge. We have carefully considered the submissions advanced by the appellant. At the end of the day we are unable to defect any weakness in the prosecution's case or the manner in which the prosecution was conducted.

Drug trafficking is a very difficult offence to prove by direct evidence. We have on several occasions in this court upset convictions for trafficking because those convictions were unsafe. The same cannot be said of the present appeal.

Before concluding these proceedings and pronouncing the formal orders we need to make two observations. First, we express our gratitude to learned counsel and the learned deputy public prosecutor for their well researched and succinct arguments. But for their efforts this *ex tempore* judgment would not have been possible.

Secondly, we would be failing in our duty if we did not commend the police in this case. Their investigation and detection of the offence has been exemplary. We commend the action taken by Lance Coporal 115915 Mohd Zain bin Peng Cheng, ASP G/11068 Perumal a/l Alagan and Insp. I/12449 Johari bin Abdullah. But for their efforts 133kgs of cannabis would have found its way into the market. This court has always taken the view that while we are ready to criticise the police, we must be equally be ready to recognise good work when we see it.

For the reasons given this appeal fails. The appeal is dismissed. The conviction and sentence is affirmed.